



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

STEPTOE & JOHNSON, LLP
2121 AVENUE OF THE STARS
SUITE 2800
LOS ANGELES CA 90067

MAILED

NOV 20 2009

OFFICE OF PETITIONS

In re Application of :
Anthony Fontaine, Hyon Im :
and Wesley Park : DECISION REFUSING STATUS
Application No. 10/033,716 : UNDER 37 CFR 1.47(a)
Filed: December 27, 2001 :
Attorney Docket No. 83336.0559:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. §1.47(a)," filed July 21, 2009.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on December 27, 2001, without an executed oath or declaration. Accordingly, on February 6, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring submission of an executed oath or declaration and payment of the surcharge for late filing under § 1.16(e).

By decision mailed March 23, 2009, the initial petition under 37 CFR 1.47(a) filed June 11, 2002 to accept a declaration executed by joint inventor Fontaine on behalf of himself and on behalf of non-signing inventors Im and Park was dismissed. It was

determined that the petition did not include adequate proof that the non-signing inventor could not be reached or found, after diligent effort, as alleged. (The petition included an acceptable declaration, payment of the petition fee of \$130 (the rate in effect on the date of filing of this petition) and stated the last known addresses for non-signing inventors Im and Park).

On instant renewed petition, applicants submitted evidence that they had found the inventors and that now the inventors, by their conduct in not responding, have refused to join in the application. However, a refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. See MPEP 409.03(d).

In this instance, the evidence submitted in support of a conclusion that all of the application papers were presented to the inventors is not sufficient. Specifically, Exhibit 1 only supports a conclusion that the signature page identifying 2 of the 3 inventors was presented. Absent a showing of presentation of the declaration pages containing the averments and the identifying information for the third inventor, the evidence is insufficient that the inventors have refused to join in the application by their conduct. The evidence does not show that the inventors were in a position to sign a proper declaration (or to understand exactly what they were being asked to sign) and by their conduct in not responding have refused.

Any renewed petition should include evidence that all of the application papers were presented to the inventors. If a complete declaration was never presented to the inventors, then such much be presented to the inventors to show refusal.

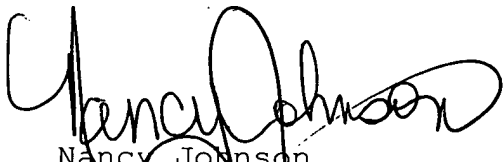
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions
ATTN: NANCY JOHNSON

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions